

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

U.S. BANK NATIONAL ASSOCIATION, :	Case No. 1:16-cv-423
AS TRUSTEE FOR CSMC MORTGAGE- :	
BACKED PASS-THROUGH :	Judge Timothy S. Black
CERTIFICATES, SERIES 2006-2 :	Magistrate Judge Karen L. Litkovitz
:	
Plaintiff, :	
vs. :	
:	
DERRYN N. JONES, <i>et al.</i> , :	
:	
Defendants. :	

**DECISION AND ENTRY ADOPTING THE REPORT AND
RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE
(Doc. 5)**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Karen L. Litkovitz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on March 31, 2016, submitted a Report and Recommendations. (Doc. 5). Defendant Derryn Jones filed objections. (Doc. 6).¹


¹ Defendant Jones essentially argues that this Court has diversity jurisdiction because Plaintiff is a citizen of the state of Delaware, not Ohio. (Doc. 6 at 3). However, the removal statute provides that a civil action “may not be removed if *any* of the parties in interest properly joined and served as *defendants* is a citizen of the State in which such action is brought.” 28 U.S.C. § 1441(b)(2) (emphasis added). As Magistrate Judge Litkovitz stated in her Report and Recommendations, even if there is complete diversity among the parties, the presence of a properly joined and served resident defendant bars removal. *Chase Manhattan Mort. Corp. v. Smith*, 507 F.3d 910, 914 (6th Cir. 2007). In other words, only if there is no plaintiff and no defendant who are citizens of the same state does the court have diversity jurisdiction. Because three of the defendants named in the foreclosure action (Defendants Derryn Jones, Dwight Jones, and Dodeka LLC) are citizens of Ohio, removal is barred under Section 1441(b).

As required by 29 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Report and Recommendations should be and is hereby adopted in its entirety. Accordingly:

1. This matter is **REMANDED** to the state court from which it was removed;
2. Pursuant to 28 U.S.C. § 1915(a), any appeal of this Order would not be taken in good faith and therefore Defendant Jones is denied leave to appeal *in forma pauperis*. Defendant Jones may apply to proceed *in forma pauperis* in the Court of Appeals; and
3. This case is **TERMINATED** on the docket of this Court.

IT IS SO ORDERED.

Date: 6/13/16


Timothy S. Black
United States District Judge